

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE:	)	CHAPTER 13
)	
TONY C. HARRIS, JR., Debtor	)	CASE NO. : 18-11080-AMC
and TABITHA NICOLE SMITH, Codebtor)	
_____)	
	)	<u>HEARING DATE:</u>
CAPITAL ONE AUTO FINANCE, A	)	Tuesday, September 25, 2018
DIVISION OF CAPITAL ONE, N.A.	)	11:00 a.m.
Movant)	
vs.	)	<u>LOCATION:</u>
	)	U.S. Bankruptcy Court
	)	Eastern District of Pennsylvania
	)	Courtroom No. 4
TONY C. HARRIS, JR., Debtor	)	900 Market Street
and TABITHA NICOLE SMITH, Codebtor	)	Philadelphia, PA 19107
Respondents)	
and)	
WILLIAM C. MILLER, ESQ.)	
Trustee)	

MOTION FOR RELIEF FROM AUTOMATIC STAY AND CODEBTOR STAY

AND NOW, comes the above-captioned Movant, Capital One Auto Finance, a division of Capital One, N.A., by and through their attorney, Jason Brett Schwartz, Esquire, who files this Motion based upon the following:

1. The Movant is a corporation having a principal place of business located at 7933 Preston Road, Plano, Texas 75024.
2. The Respondent, Tony C. Harris, Jr., is an individual residing at 9601 Ashton Road, Apt 021, Philadelphia, PA 19114, who has filed a petition under Chapter 13 of the Bankruptcy Code. The respondent, Tabitha Nicole Smith, is an individual residing at 9601 Ashton Road, Apt 021, Philadelphia, PA 19114, who is non-filing codebtor.

3. On or about August 5, 2017, Debtor and Codebtor entered into a Retail Installment Sale Contract (“Contract”), involving a loan in the amount of \$17,651.00 for the purchase of a 2013 HYUNDAI Azera Sedan 4D Technology V6.

4. The vehicle secured by the Contract has V.I.N. KMHFH4JG6DA230577.

5. The Movant is the assignee of the Contract.

6. The above – described vehicle is encumbered by a lien with a payoff in the amount of \$18,180.17 plus other appropriate charges as of August 23, 2018, but subject to change. The regular monthly payment is \$432.98 at an interest rate of 21.00 %.

7. Applying payments received to the earliest payment due, payments have been missed post-petition, since May 15, 2018, in the amount of \$1,389.90, plus all applicable late charges, interest, attorneys’ fees and costs through August 23, 2018, though subject to change.

8. The retail value of the vehicle in question is \$13,550.00.

9. The vehicle is not necessary to an effective reorganization.

10. The Movant is the only lienholder of record with regard to the vehicle.

11. In order to proceed with repossession of the vehicle, relief from the automatic stay must be obtained.

12. Failure to make adequate protection payment is cause for relief from the automatic stay and codebtor stay.

13. The Movant has incurred \$481.00 in attorney’s fees in the filing of this Motion.

14. The vehicle is a rapidly depreciating asset. Movant requests the waiver of Rule 4001(a)(3).

WHEREFORE, Movant prays for your Honorable Court to enter an Order permitting the Movant to proceed with the repossession proceedings of the aforementioned vehicle.

Respectfully submitted,

MESTER & SCHWARTZ, P.C.

BY: /s/ Jason Brett Schwartz
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